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February 13, 2003

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P&G Case AA-542

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In-re Application of

Akikazu (nmn) Yoshikawa, et al.

Serial No.: 10/071,599

Group Art Unit: 1616

Confirmation No. 2691

Filed: February 8, 2000

Examiner: R. Dewitty

For: **ALLERGEN NEUTRALIZATION
COMPOSITIONS CONTAINING ALUMINUM
IONS**

RESPONSE TO ELECTION REQUIREMENT

Commissioner for Patents
Washington, D.C. 20231

Dear Sir:

This is responsive to the Office Action mailed December 31, 2002 (Paper No. 2).

The Office Action states that Claims 1, 6, 9, and 13 are generic to a plurality of disclosed patentably distinct species comprising solvent, aluminum ion, polymers, allergy denaturing compounds, wetting agents, and metal ions. The Office action indicates that the Applicant is required to elect a single species for each of a solvent, aluminum ion, polymers, allergy denaturing compounds, wetting agents, and metal ions.

The applicants hereby respectfully traverse the requirement for the election of species.

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The election of species is governed by 37 C.F.R. § 1.141(a). Section 1.141(a) of Title 37 of the Code of Federal Regulations provides:

- (a) Two or more independent and distinct inventions may not be claimed in one national application, except more than one species of an invention, not to exceed a reasonable number, may be specifically claimed in different claims of a national application, provided the application also includes an allowable claim generic to all the claimed species and all the claims to species in excess of one are written in dependent form (§1.75) or otherwise include all the limitations of the generic claim. (Emphasis added).

Applying the test set out in the regulations, if the Applicants elect a "species" that is covered by an independent claim (such as Claim 1, for instance), the Applicants should be permitted to prosecute all of the claims that are dependent from that claim. The election of species imposed by the examiner goes far beyond the grouping of species that is permitted by the patent regulations. The Applicants should not be subjected to requirements for the election of species that includes each of the components of the claimed composition, particularly when the separate substances and compounds are, in some cases (e.g., different types of wetting agents), not even claimed.

For the purpose of complying with 35 U.S.C. Section §121, however, and without admitting that the requirement for the election of species is proper, the Applicants elect to prosecute the following "species" for the following claims:-

- Claim 1, and its dependent claims -- Solvent -- water
- Claim 1, and its dependent claims -- aluminum ion -- aluminum sulfate
- Claim 6, and its dependent claims -- polymers -- polyquaternium polymers
- Claim 9, and its dependent claims -- allergy denaturing compounds -- polyquaternium polymers
- Claim 12 -- wetting agents -- nonionic surfactants
- Claim 13, and its dependent claims -- additional metal ions -- Zn ion.

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Further, since Claims 1, 6, 9, 12, and 13 are said to be generic, if these claims are allowed, the Applicants believe that these claims will cover all of the species that they could read on, even though Applicants were required to elect only a single species herein.

Respectfully submitted,

FOR: Akikazu (nmn) Yoshikawa, et al.

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February 13, 2003.
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